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For 14 Views (1529) (26)

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ACTION EA-14

INFO OCT-01 CIAE-00 DODE-00 PM-06 H-02 INR-06 L-03 NSAE-00
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AID-20 RSR-01 /106 W

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R 141021Z AUG 71
FM AMEMBASSY SAIGON
TO SECSTATE WASHDC 8687
INFO AMEMBASSY BANGKOK
AMEMBASSY PHNOM PENH
AMEMBASSY VIENTIANE
AMCONSUL DANANG
CINCPAC
USDEL FRANCE

DEPARTMENT OF STATE A/CDC/MR
REVIEWED BY Dean Szamber DATE 1/26/82
RDS☐or XDS☐EXT. DATE
TS AUTH. REASON(S)
ENDORSE EXISTING MARKINGS ☐
DECLASSIFIED☑ RELEASABLE☑
RELEASE DENIED☐
8PA or FOI EXEMPTIONS

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C O N F I D E N T I A L SAIGON 130

SUBJ: FURTHER LEGAL MOVES ON KY'S PRESIDENTIAL CANDIDACY

REF: A. SAIGON 12444
B. SAIGON 12887

1. SUMMARY. SUPREME COURT CHIEF JUSTICE TRAN VAN LINH CONFIRMED TO EMBOFFS AUGUST 13 THAT VICE PRESIDENT KY HAS NOT FILED A COMPLAINT AGAINST THE AUGUST 5 PROVISIONAL DISQUALIFICATION AND THUS IS NOW PRECLUDED BY THE AUGUST 12 DEADLINE FROM DIRECT APPEAL. LINH SAID THAT THE SUPREME COURT, IN ORDER TO CLEAR THE AIR, MAY NEVERTHELESS DECIDE ON ITS OWN TO REVIEW THE KY SITUATION DURING THE COMING WEEK. LINH ALSO CONFIRMED THAT ON AUGUST 4 A KY PARTISAN FILED SUIT WITH THE COURT TO CHALLENGE THE CONSTITUTIONALITY OF THE PRESIDENTIAL ELECTION LAW. LINH EXPRESSED ADMIRATION FOR THE SHREWDNESS OF KY'S DOUBLE-EDGED LEGAL STRATEGY BUT INDICATED THAT BOTH THRUSTS WOULD PROBABLY FAIL.

END SUMMARY.

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2. IN RMARKS TO LOCAL NEWSMEN AT AN AUGUST 12 SUPREME COURT RECEPTION, CHIEF JUSTICE OF THE SUPREME COURT LINH REPORTEDLY STATED THAT "THE COURT IS NOT BOUND TO DISCUSS THE (KY CANDIDACY) MATTER FURTHER," AND NOTED THAT "WE CANNOT CONSIDER A CASE WITHOUT AN OFFICIAL COMPLAINT." HOWEVER, THE NEXT DAY, LINH CONFIDED TO EMBOFFS THAT THE COURT ON ITS OWN INITIATIVE MIGHT WELL DECIDE TO REVIEW THE MERITS OF VICE PRESIDENT KY'S CANDIDACY. ALTHOUGH KY HAS NOT LODGED A FORMAL COMPLAINT AGAINST THE AUGUST 5 RULING BY THE OFFICE OF THE SUPREME COURT (REF A.), LINH SAID THE COURT NEVERTHELESS HAS A DUTY--MORE MPOLITICAL THCXULEGAL--TO CLARIFY KY'S CLAIMS AND TO DISPEL LINGERING SUSPICIONS OF UNFAIRNESS. LINH, WHO DISPLAYED RESENTMENT OVER KY'S CHARGES AGAINST THE COURT, NOTED THAT HTE PERSONALLY FAVORS SUPREME COURT REVIEW AND INDICATED THAT THE COURT MIGHT ANNOUNCE ITS DECISION ON WHETHER OR NOT TO RECONSIDER KY'S CASE AS EARLY AS AUGUST 16, WHEN AT LEAST EIGHT OF THE NINE JUSTICES SHOULD BE PRESENT IN SAIGON.

3. IF THEY DECIDE TO REVIEW, LINH ADDED, THE COURT WOULD HAVE TO EXAMINE THE VALIDITY OF KY'S 39 UNCERTIFIED COUNCILOR ENDORSEMENTS ORIGINALLY CERTIFIED FOR THIEU. KY WOULD HAVE TO PROVIDE ADEQUATE EVIDENCE TO ESTABLISH FRAUD IN EACH OF AT LEAST 38 INSTANCES. (LINH CONFIRBD KY HAS A TOTAL OF 101 ENDORSEMENTS, 62 CONFIRMED AND 39 CONTESTED.) HE EVINCED SKEPTICISM THAT KY COULD DO THIS SINCE THE BURDEN OF PROOF IS ON EACH COUNCILOR TO SUBSTANTIATE A CLAIM OF COERCION OR OTHER ILLEGAL PRICTICE. LINE ALSO UNDERSTANDS THAT SEVERAL COUNCILORS HAVE ALREADY ABANDONED KY'S CAUSE, THUS PROBABLY UNDERMINING KY'S CANDIDACY REGARDLESS OF THE COURT'S DECISION.

4. IN ADDITION TO KY'S CLAIM THAT HE HAS A CONSTITUTIONAL RIGHT TO SUPREME COURT REVIEW, LINH NOTED THAT KY HAS LAUNCHED A SECONDARY LEGAL ATTACK THROUGH A LAWSUIT BROUGHT AUGUST 4 BY LAWYER PHAM KIM VINH, WHICH CHALLENGES THE CONSTITUTIONALITY OF ARTICLE 14 OF THE PRESIDENTIAL ELECTION LAW. THE SUIT ARGUES THAT THE ELECTION LAW IS UNCONSITUTIONAL BECAUSE IT PROVIDES FOR A FIRST POSTING OF CANDIDATES BY THE OFFICE OF SUPREME COURT (FOUR JUDGES), WHILE ARTICLE 54 OF THE CONSTITUTION REQUIRES THAT THE SUPREME COURT PER SE (OR AT LEAST A MAJORITY OF THE NINE JUSTICES) ESTABLISH THE CANDIDATE

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LIST. LINH THOUGHT THIS ARGUMENT HAD NO VALIDITY AND COMMENTED THAT A PLENARY SESSION OF THE JUSTICES HAD EARLIER DECIDED THAT THE OFFICE HAD AUTHORITY OVER THE FIRST POSTING. JUSTICE LINH STATED THAT THE COURT WILL ANNOUNCE ITS DECISION ON THE VINH CASE AUGUST 19. LINH ALSO SAID A HOLDING OF UNCONSTITUTIONALITY BY THE SUPREME COURT WOULD REQUIRE THAT A NEW PRESIDENTIAL ELECTION LAW BE PASSED, THUS CAUSING POSSIBLE SEVERE POLITICAL REPERCUSSIONS. (COMMENT. SEVEN JUSTICES MUST APPROVE A RULING OF UNCONSITUTIONALIT AN IMPORBABLE FEAT CONSIDERING THE COURT'S PRO-EXECUTIVE SENTIMENT.)

5. COMMENT: CONSIDERING THE CHIEF JUSTICE'S SKEPTICISM OF KY'S LEGAL AND CONSTITUTIONAL ARGUMENTS, THE COURT'S PRO-ADMINISTRATION MAJORITY AND THE OBVIOUS INTEREST OF THE EXECUTIVE IN THE CASE, IT IS HIGHLY UNLIKELY, ALTHOUGH TECHNICALLY NOT IMPOSSIBLE, THAT KY WILL SUCCEED ON EITHER RWRACK OF HIS LEGAL ATTACK. A FULL RESUME OF THE MERITS OF

HIS CANDIDACY MAY DELATE KY'S CLAIMS OF UNFAIRNESS AND THUS REDUCE THE LUSTER OF HIS MARTYR'S HALO. BECAUSE SUCH WOULD BE IN THIEU'S INTEREST, WE WOULD NOT EXPECT THE EXECUTIVE TO STRENUOUSLY OPPOSE A SUPREME COURT REVIEW OF KY'S CASE. THERE IS STILL NO INDICATION THAT THIEU WILL RELENT AND RELINQUISH ENDORSEMENTS TO KY; ON THE CONTRARY THIEU HAS ISSUED AN UNUSUALLY SHARP PUBLIC RIPOSTE (SEPTEL) TO KY'S ACCUSATIONS. BERGER